

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**IN RE:**

**JOE JESSE MONGE and  
ROSANA ELENA MONGE,**

**Debtors.**

**JOE JESSE MONGE and  
ROSANA ELENA MONGE,**

**Plaintiff,**

**v**

**ALICIA ROJAS and FRANCISCO  
JAVIER JAYME,**

**Defendants,**

**CASE NO: 09-30881-lmc**

**CHAPTER 11**

**ADVERSARY NO. 10-3019-lmc**

**AMENDED COMPLAINT TO RECOVER AND FOR TURNOVER OF PROPERTY  
AND FOR ATTORNEY'S FEES AND DAMAGES**

**TO THE HONORABLE LEIF M. CLARK, UNITED STATES BANKRUPTCY JUDGE:**

Come now, Joe Jesse Monge and Rosana Elena Monge, Plaintiffs/Debtors in the above-entitled and numbered case by and through Sidney J. Diamond, of Sidney Diamond, P.C., their attorney and files this Amended Complaint to Recover and for Turnover of Property and for Attorney's Fees and Damages and in support thereof would respectfully show the Court as follows:

1. This is an action brought by the Plaintiffs as Debtors-in-Possession in the above-captioned bankruptcy proceeding to recover and for turnover of property and to determine nature, extent and validity of liens and for damages pursuant to the provisions of 11 U.S.C. §542.

2. On or about April 27, 2009, the Plaintiffs/Debtors, Joe Jesse Monge and Rosana Elena Monge, filed a voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1101, et seq. which is presently pending. The Debtors are subject to the jurisdiction of this

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Court pursuant to his filing of the above-captioned Chapter 11 case. No trustee has been appointed in this Chapter 11 case

3. Jurisdiction over this adversary proceeding is under 18 U.S.C. 544 (a)(1). This is a core proceeding under 28 U.S.C. 157(b)(2)(A)(K) & (O) and 11 U.S.C. 544(a)(1).

4. Venue is proper under 28 U.S.C. 1409(a)

5. Upon information and belief, Defendants Alicia Rojas and Francisco Javier Jayme are husband and wife whose address is 105 Thoroughbred Court, Santa Teresa, New Mexico 88008-9130 and may be served under F.R. Bankr. P. 7004 via First Class U.S. Mail. Alicia Rojas and Francisco Javier Jayme were listed as creditors of Plaintiffs/Debtors.

6. On February 1, 2006, Plaintiffs purchased the house and lot located at 105 Thoroughbred Court, Santa Teresa, NM for the purchase price of \$607,500.00 from Francisco J. Jayme. Plaintiffs claim ownership of the real property located at 105 Thoroughbred Court, Santa Teresa, New Mexico.

7. On February 3, 2005, Alicia Rojas entered into a rental agreement with Plaintiffs wherein she agreed to rent the house in an amount equal to the monthly mortgage payment of approximately \$7,019.19 per month to include escrow and to pay all expenses and utilities. Alicia Rojas failed to make the rent payments as agreed and has defaulted on the rental agreement. Alicia Rojas and Francisco J. Jayme have lived in the property but have not made the rent payments as agreed and the contract has since expired. Plaintiffs, Joe Jesse Monge and Rosana Elena Monge claim that they are presently owed the approximate amount of \$456,247.35 from Defendants.

8. Plaintiffs request that Defendants be required to immediately turn over the property to Plaintiffs.

9. Plaintiffs are entitled to a judgment for the amounts Defendants are in default, plus costs, attorney's fees, any damages to the home and past due interest on the loan.

10. Additionally, Plaintiffs are entitled to damages pursuant to the provisions of 11 U.S.C. §542.

**WHEREFORE, PLAINTIFFS RESPECTFULLY REQUEST THE FOLLOWING RELIEF:**

1. An order determining that Plaintiffs are the owners of the property located at 105 Thoroughbred Court, Santa Teresa, NM and entitled to rental payments for 1 year and additional rental payments for each month succeeding the month after the expiration of the lease in the total amount of \$456,247.35 through the date of this Complaint;
2. An order ordering Defendants to turn over the property at 105 Thoroughbred Court, Santa Teresa, NM to Plaintiffs;
3. An order determining the interest owed to Plaintiffs from Defendants' from the date of default through the date of this Complaint;
4. An order awarding Plaintiffs attorney's fees and costs of court in an amount to be determined by the Court; and
5. For such other and further relief to which Plaintiffs may show themselves justly entitled.

**DATED:** June 24, 2010.

Respectfully submitted,

SIDNEY DIAMOND, P.C.

/s/ Sidney J. Diamond

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